IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 260 of 1985

with

CRIMINAL REVISION APPLICATION No 72 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

STATE OF GUJARAT

Versus

PATEL CHHAGAN JAVER

Appearance:

1. Criminal Appeal No. 260 of 1985
PUBLIC PROSECUTOR for Petitioner No. 1
MR KR RAVAL for Respondent No. 1-7

2. Criminal Revision Application No. 72 of 1985
MR MJ BUDDHBHATTI for Petitioner No. 1
PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE K.M.MEHTA

Date of decision: 02/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.M.MEHTA)

1. State of Gujarat has filed this appeal under Section 378 of the Code of Criminal Procedure (hereinafter referred to as "Code") against the order of acquittal dated 25.1.1985 passed by the learned Additional Sessions Judge, Bhavnagar, in Sessions Case No. 26 of 1984. The learned judge by his impugned judgement has acquitted all the accused as regards offences under Section 397, 395, 348, 330, 324 506(2) read with Section 147, 148, 149 of the Indian Penal Code (IPC for short). However, the learned judge has convicted accused Nos. 1 and 7 for offences punishable under Section 323 and 342 of the IPC read with Section 235(2) of the Code and sentenced them for one month rigorous imprisonment and pay fine of Rs. 50/- and in default to undergo rigorous imprisonment for seven days for each offence.

2. It may be noted that so far as accused nos. 1 and 7 are concerned, they have filed Criminal Revision Application No. 72 of 1985 before this court against the order of their conviction passed by the learned Additional Sessions Judge on 25.1.1985. As the Criminal Appeal and the Criminal Revision Application arise out of common judgement, they are disposed of by this common judgement.

3. It is the case of the prosecution that Raghavji Kanji, son of the complainant Kanji Kalyan, was doing labour work in the diamond factory of his brother situated at Chitra, Bhavnagar. Formerly, Raghavji Kanji was carrying on business with accused No. 1 Patel Chhagan Javer on partnership basis. Thereafter, they separated and they started carrying on business of polishing diamond separately. As per the case of prosecution there was difference and dispute between Patel Chhagan Javer and Raghavji Kanji in connection with the business of diamond polishing. The parties settled the dispute and as per the settlement, amount has to be paid by Raghavji Kanji.

4. The case of the prosecution is that on 25.7.1983 at about 8.00 a.m. Raghavji Kanji was going to factory

at Bhavnagar on his bicycle in connection with diamond business. It is the prosecution case that when he reached near Nari village which was about 3 miles away from Bhavnagar, Chhagan son of Javer and Jeram Sukhabhai's sons had beaten Raghavji Kanji and thereafter Raghavji Kanji was confined in the house of Chhagan. Jetha Kanji Kalyan and Parshottam Kalyan went to the house of Chhagan Jeram. It is the case of prosecution that at that time Chhagan Javer, Dhiru Javer and Jeram Sukha were there and they were possessing stick. It is the case of prosecution that while Kanji Kalyan was going to Bhavnagar he met Tapubhai. He also met Police Sub-Inspector of Vartej Police Station. He reached Vartej Police Station at about 12.30 p.m. As Raghavji Kanji suffered certain injuries, he was taken to dispensary at Bhavnagar.

4.1 Thereafter, Kanji Kalyanbhai has informed Police Sub-Inspector, Vartej, Bhavnagar, regarding aforesaid incident that was registered as Mark-A. Raghavji Kanji has also thereafter registered information before the Head Constable A-Division, Bhavnagar, regarding the aforesaid incident which information is registered as B-Mark.

5. It is the case of the prosecution that PSI of Vartej Police Station D.B. Datera had registered offence at about 5.30 p.m. The PSI conducted investigation and took custody of bicycle and tiffin box. He arrested accused on 26.7.1983. He carried out panchnama of the scene of offence and took statements of witnesses and also collected injury certificate of Raghavji Kanj, arrested accused persons and after completing investigation filed charge-sheet before the Chief Judicial Magistrate, Bhavnagar on 30.8.1983.

6. As per the provisions of the Code the case was committed to Court of Sessions on 31.1.1984. The Sessions Court framed charges against all the accused for the alleged offences punishable under Sections 395, 397, 348, 330 read with Section 149, 147 and 148 of IPC.

7. Before the Sessions Court the prosecution examined PW-1 Kanji Kalyan, father of Raghavji Kanji at Exh. 12. As per his say, his son Raghavji Kanji was injured by the accused and thereafter he was in the confinement of house of Chhagan Jeram. He has tried to support the case of prosecution regarding taking tiffin box, gold ring, watch, gold chain and Rs. 5000/- which the accused have taken.

8. Thereafter, prosecution examined PW-2 Raghavji

Kanji at Exh. 13. As per his say on the day of incident when he was near the kanyashala, Chhagan Javer came to him and he fell down from the bicycle and Babu Javer, Khimji Jeram, Manji Jeram Nanu Jeram have caught him and taken golden chain, golden ring and watch. They have also taken Rs. 5000/- from his pocket. It was also stated that Raghavji Kanji was compelled to write to his father and brother to make payment of Rs. 10,000/- and Rs. 15,000/- for his release. He was also taken to the house of Chhagan Javer.

9. Prosecution examined PW-3 Bhikabhai Jivrajbhai at Exh. 14. He has also tried to support the case of prosecution that Raghavji Kanji was illegally confined to the house of Chhagan Javer.

10. Prosecution examined PW-4 Vallabh Karsan at Exh. 15. He has stated that he has also come to know that Raghavji Kanji was illegally confined in the house of Chhagan Javer.

11. Prosecution examined PW-5 Bhagwan Javer at Exh. 18. He has tried to prove panchnama regarding scene of offence.

12. Prosecution also examined PW 6 Devraj Jiva at Exh. 20 He has stated that because of raining there are no marking on the ground in this behalf. However, he stated that bicycle and tiffin were in the house of Chhagan Javer.

13. PW 7 Hirji Pranji also examined at Exh. 21, a police panch, by the prosecution. He has supported panchnama regarding Chhagan Javer. He has also stated that he has signed panchnama.

14. Prosecution has examined PW-8 Kesarisinh Mohabetsinh at Exh. 23. He is head-constable in Vartej Police Station. He has stated that Raghavji Kalyan, Chhagan Javer and Abdul came to police station but as Raghavji Kanji was injured, he was not able to speak and without recording his information he was sent to Vartej dispensary and as per the instruction of the doctor he was sent to Bhavnagar hospital.

15. PW-9 Nanubhai Jivabhai at Exh. 26 was also examined. He is a police head-constable at Vartej Police station. It was stated that Raghavji Kanji was in the room of Chhagan Javer and at that time he was also injured.

16. Prosecution examined PW-10 Gambirsinh Madhuba at Exh. 27. He had also accompanied to Vartej Police station on the same day. He has supported the case of prosecution that Raghavji Kanji was in the house of Chhagan Javer and there was injury on the back side of Raghavji Kanji.

17. PW-11 Kanyalal Bababhai at Exh. 28 was examined by the prosecution. He has stated that in the house of Chhagan Javer there was one belt which is lying on the table.

18. PW-12 Shamji Parshottam at Exh. 30 was examined by the prosecution. He has not supported the case of prosecution. He was treated as hostile.

19. PW-13 Raghavbhai Kalyanbhai at Exh. 31 is a panch witness. He has proved regarding clothes of Raghavji Kanji and stated that the clothes are having blood marks.

20. PW-14 Doluba Bhimjibhai at Exh. 33 is PSI of Vartej Police Station. He has received information at about 12.30 p.m. on the said day. He has stated that he has found bicycle and tiffin box near accused No. 1. He has also identified belt and chain from the place. He has supported panchnama at Exh. 22 in this behalf.

21. Prosecution has examined PW 15 Dr. Pravinkumar Potabhai Wagh at Exh. 35. He has stated injuries on Raghavji Kanji. From the narration of injury, he has stated that these injuries are possible by beating with belt and chain. This injury can be healed within four days without any medicine. He has given certificate at Exh. 36.

22. PW-16 Diluba Laguba at Exh. 38 is a head-constable. He has recorded statement of Raghavji Kanji. He has identified the signature of Raghavji Kanji below the statement.

23. Over and above the prosecution has also produced certificates, documentary evidence, panchnama of scene of offence and panchnama regarding injury, panchnama regarding bicycle, medical certificate of Raghavji Kanji and other evidences.

24. It is the case of prosecution that incident of beating and snatching gold articles and cash had taken place near Nari village which raises doubt particularly when Raghavji Kanji if going by bicycle and as per his

say if he was beaten, he would have made hue and cry and people must have collected and the bicycle and tiffin could have found at that place. However, no such witnesses have been examined even though it has come in evidence there were many passers-by on the road and tiffin and bicycle were found at the house of Chhagan Javer. In view of the same, it is not possible to believe the say of Raghavji Kanji that there was a theft of golden chain, golden ring and Rs. 5000/- in this behalf.

24.1 Complainant Raghavji Kanji, has immediately gone to dispensary at Bhavnagar. On way he did go to Vartej Police Station. He could have filed complaint there and there. It has also come in evidence that police asked him to get medical treatment first and then to file complaint. Ultimately the complaint was filed at about 1.30 p.m. before Bhavnagar Police Station. This explanation of complainant of late filing of complaint does not appear to be natural. Admittedly, complainant sustained injuries which are minor in nature and he could have been treated at Vartej only. Thus in our opinion, the prosecution has not sufficiently explained delay in filing complaint and therefore possibility to involve all accused falsely cannot be ruled out.

24.2 It is the case of prosecution that accused No. 1 Chhagan Javer caught hold of heir. Accused No. 2 Babu Javer has taken golden chain. Accused No. 4 Khimji Jeram snatched golden ring and watch. All the accused then beaten Raghav Kanji. Accused No. 1 has also beaten Raghav Kanji with chain of cycle. Accused No. 7 has inflicted blow with knife on heaps. However, it is not possible to believe this for the simple reason that the same is not corroborated by medical evidence or any other evidence like cut in clothes or finding of blood stain on the spot.

24.3 In view of the same, we are of the view that the prosecution has failed to prove the case against the accused under Sections 395, 397 read with Sections 147, 148, 149 of the I.P.C.

24.4 We however, find no difficulty in convicting accused No. 1 and 7 for offences punishable under Section 323 and 342 of the I.P.C. In this case prosecution has stated that Raghavji Kanji was found from the house of Chhagan Javer accused No. 1. For that the prosecution has proved case by evidence of Kanji Kalyan and also evidence of head-constable and the Police Sub-Inspector. These witnesses have categorically stated

that Raghavji Kanji was confined in the house of Chhagan Javer. Other witnesses Sukhbhai and Kanji Kalyan have also supported the prosecution case. We have gone through the evidence in this behalf. We are clearly of the opinion that complainant Raghavji Kanji was wrongfully confined in the house of accused No. 1 and was beaten by accused No. 1 and accused No. 7. Beating injury is established with medical evidence.

25. In view of the same we are of the view that prosecution has successfully proved that accused Nos. 1 and 7 have committed offences punishable under Section 323 and 342 of the I.P.C. We accordingly confirm the finding of the learned judge in this behalf.

26. The learned judge has convicted accused Nos. 1 and 7 and sentenced them rigorous imprisonment for one month and fine of Rs. 50/- each and in default to undergo rigorous imprisonment for seven days for each offence. Considering the fact that incident has taken place way back in 1983 and the parties by this time must have forgotten such minor incident and therefore at this stage no useful purpose will be served in sending accused to complete sentence of imprisonment, instead ends of justice shall be met if we impose reasonable amount at time to be paid to injured complainant by way of compensation.

27. In view of the above observation, Criminal Appeal No. 260 of 1985 and Criminal Revision Application No. 72 of 1985 are dismissed. In view of the peculiar facts and circumstances of the case, instead of sending accused No. 1 and 7 to jail for one month, the sentence of one month rigorous imprisonment and fine of Rs. 50/- and in default to undergo further rigorous imprisonment of 7 days against accused No. 1 and 7 imposed by the learned trial court is converted to only fine of Rs. 1000/(Rupees one thousand) to each of the accused under Section 323 and 342 of the I.P.C. Accused No. 1 and 7 each will pay fine of Rs. 1000/- and in default each accused will undergo imprisonment of one month. If the amount is paid by accused No. 1 and 7, the same will be paid to Raghav Khanji injured after proper verification. To the aforesaid extent the order of the trial court is modified. The order of the trial court as well as the order of this court is suspended for a period of four weeks from today to enable accused No. 1 and 7 to pay fine of Rs. 1000/each imposed by this court. The writ of this court shall be conveyed to accused No. 1 and 7 through Vartej Police Station, near Bhavnagar.

(K.R. VYAS, J)

(K.M. MEHTA, J)

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